

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**





To be argued by  
Jerome F. O'Neill

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket Nos.

**74-2160**  
**74-2320**

UNITED STATES OF AMERICA

Appellee

v.

ANTHONY THOMAS CAMPANILE  
WILLIAM MONKS

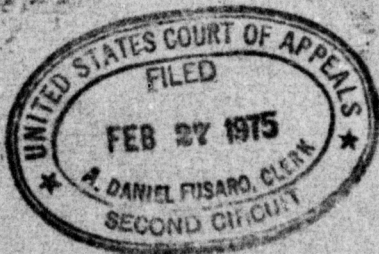
Appellants

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Appeal from the United States District  
Court for the District of Vermont

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BRIEF FOR THE UNITED STATES



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## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CASES . . . . .	i
STATEMENT OF THE CASE. . . . .	1
STATEMENT OF ISSUES. . . . .	3
STATEMENT OF FACTS . . . . .	4
ARGUMENT	
<u>POINT I</u>	
THE EVIDENCE OF OTHER CRIMINALITY WAS PROPERLY ADMITTED TO SHOW KNOWLEDGE, INTENT, PLAN, SCHEME, IDENTITY AND RES GESTAE. . . . .	19
<u>POINT II</u>	
CAMPANILE'S STATEMENT TO F.B.I. AGENT MCCARTIN WAS VOLUNTARY . . . . .	27
<u>POINT III</u>	
THE STATEMENT OF MONKS TO WITNESS SHIRLEY BROWN THAT MONKS AND CAMPANILE WERE PLANNING TO BURG- LARIZE A NEW JERSEY BANK WAS RELEVANT TO PROVE CRIMINAL INTENT OF MONKS AND CAMPANILE, AND FURTHER AS TO CAMPANILE, THE STATE- MENT WAS:	
(1) ADMISSIBLE UNDER THE CO- CONSPIRATORS EXCEPTION TO THE HEARSAY RULE, AND	



TABLE OF CONTENTS - continued

Page

(2) HARMLESS ERROR, SINCE PRIOR TO OFFERING THE STATEMENT, FBI AGENT McCARTIN TESTIFIED THAT CAMPANILE ADMITTED IN A POST ARREST STATEMENT THAT HIS PURPOSE IN "COMING TO VERMONT . . . WAS TO LINE UP ROBBERIES . . . ."	32
--	----

POINT IV

ANTHONY CAMPANILE DID NOT HAVE STANDING TO COMPLAIN OF THE SEARCH OF MICHAEL CAMPANILE'S APARTMENT. . . . .	38
--	----

CONCLUSION . . . . .	41
----------------------	----

# TABLE OF CASES

	<u>Page</u>
<u>Abel v. United States</u> , 362 U.S. 217 (1970) . . . . .	39
<u>Brown v. United States</u> , 411 U.S. 223 (1973). . . . .	37, 39
<u>Bruton v. United States</u> , 391 U.S. 123 (1968) . . . . .	33, 35
<u>Chapman v. California</u> , 386 U.S. 18 (1969). . . . .	36
<u>Harrington v. California</u> , 395 U.S. 250 (1969). . . . .	36
<u>Jones v. United States</u> , 362 U.S. 257 (1960). . . . .	38
<u>Simmons v. United States</u> , 390 U.S. 377 (1968). . . . .	39
<u>Spencer v. Texas</u> , 385 U.S. 555 (1967). . . . .	19
<u>Stone v. United States</u> , 435 F.2d 1402 (2d Cir. 1970), <u>cert. denied</u> , 402 U.S. 977 (1971) . . . . .	37
<u>United States v. Alsondo</u> , 486 F.2d 1339 (2d Cir. 1973), <u>pet. for cert. granted sub nom. United States v. Feola</u> , 42 U.S.L.W. 3504 (U.S. Apr. 15, 1974) . . . . .	35
<u>United States v. Annunziato</u> , 293 F.2d 373 (2d Cir.), <u>cert. denied</u> , 368 U.S. 919 (1961). . . . .	33
<u>United States v. Baker</u> , 419 F.2d 83 (2d Cir. 1969), <u>cert. denied</u> , 397 U.S. 971 (1970). . . . .	24



TABLE OF CASES - continued

	<u>Page</u>
<u>United States v. Canjiano</u> , 491 F.2d 906 (2d Cir. 1974), <u>cert. denied</u> , 42 U.S.L.W. 3229 (U.S. Oct. 21, 1974) . . . . .	37
<u>United States v. Cowan</u> , 396 F.2d 83 (2d Cir. 1968) . .	39
<u>United States v. Deaton</u> , 381 F.2d 114 (2d Cir. 1967) . . . . .	20
<u>United States v. Drummond</u> , Docket No. 74-2264 (2d Cir. Feb. 11, 1975) . . . . .	20
<u>United States v. Frascone</u> , 299 F.2d 824 (2d Cir.), <u>cert. denied</u> , 370 U.S. 910 (1962) . . . . .	23
<u>United States v. Indiviglio</u> , 352 F.2d 276 (2d Cir. 1965)(en banc), <u>cert. denied</u> , 383 U.S. 907 (1966) . .	29, 30
<u>United States v. Johnson</u> , 382 F.2d 280 (2d Cir. 1967) . . . . .	20, 24
<u>United States v. Keilly</u> , 445 F.2d 1285 (2d Cir. 1971), <u>cert. denied</u> , 406 U.S. 962 (1972) . . . . .	19
<u>United States v. Klein</u> , 340 F.2d 547 (2d Cir.), <u>cert. denied</u> , 382 U.S. 850 (1965) . . . . .	20
<u>United States v. Light</u> , 394 F.2d 908 (2d Cir. 1968) . .	20

TABLE OF CASES - continued

	<u>Page</u>
<u>United States v. Littman</u> , 421 F.2d 981 (2d Cir. 1970), <u>cert. denied</u> , 400 U.S. 991 (1971). . .	35
<u>United States v. Leftwich</u> , 461 F.2d 586 (3rd Cir.), <u>cert. denied</u> , 409 U.S. 915 (1972). . . . .	24
<u>United States v. Overton</u> , 470 F.2d 761 (2d Cir. 1972), <u>cert. denied</u> , 411 U.S. 909 (1973) . . . . .	20
<u>United States v. Persico</u> , 425 F.2d 1375 (2d Cir.), <u>cert. denied</u> , 400 U.S. 869 (1970). . . . .	20, 24
<u>United States v. Pugliese</u> , 153 F.2d 497 (2d Cir. 1945) . . . . .	23
<u>United States v. Ruggiero</u> , 472 F.2d 599 (2d Cir.), <u>cert. denied</u> , 412 U.S. 939 (1973). . . . .	35
<u>United States v. Sacco</u> , 436 F.2d 780 (2d Cir. 1971). .	40
<u>United States v. Sidman</u> , 470 F.2d 1158 (9th Cir. 1972), <u>cert. denied</u> , 409 U.S. 1127 (1973). .	23
<u>United States v. Sing Kee</u> , 250 F.2d 236 (2d Cir. 1957), <u>cert. denied</u> , 355 U.S. 954 (1958) . . . . .	30



IN THE  
UNITED STATES COURT OF APPEALS  
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UNITED STATES OF AMERICA,

Appellee

v.

ANTHONY THOMAS CAMPANILE  
WILLIAM MONKS,

Appellants

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BRIEF FOR THE UNITED STATES

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STATEMENT OF THE CASE

Anthony Thomas Campanile and William Monks appeal from a judgment of conviction entered on August 19, 1974 in the United States District Court for the District of Vermont after a nine day trial before the Honorable Albert W. Coffrin, United States District Judge, and a jury.

An indictment bearing criminal number 73-58, filed September 26, 1973 charged the defendants in two counts with the theft of approximately \$1,353.25 from the Franklin Bank, Milton, Vermont, the deposits of which were insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, §§ 2113(b) and 2 (Count I); and the theft of approximately \$887.98 from The Howard Bank, Enosburg Falls, Vermont, the deposits of which also were insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, §§ 2113(b) and 2 (Count II).

Trial commenced on April 16, 1974, and terminated on April 26, 1974, with a verdict of guilty as to both defendants on both counts. On August 19, 1974, Judge Coffrin sentenced Campanile and Monks to imprisonment for a term of eight years on each count, to run concurrently.\* Campanile and Monks are presently in custody serving their sentences.

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\*

Monks also was sentenced to a concurrent term of three years on a charge of interstate transportation of a stolen motor vehicle, the van in which he and Campanile travelled from New Jersey to Vermont, following a plea under Rule 20 to an indictment from the United States District Court for the District of New Jersey. Campanile subsequently was sentenced on this charge in the United States District Court for the District of New Jersey on September 9, 1974 and received a sentence of three years to run concurrently with the Vermont sentence.



STATEMENT OF ISSUES

	<u>Page</u>
I    WHETHER THE EVIDENCE OF OTHER CRIMINALITY WAS PROPERLY ADMITTED TO SHOW KNOWLEDGE, INTENT, PLAN, SCHEME, IDENTITY AND RES GESTAE. . . . .	19
II    WHETHER CAMPANILE'S STATEMENT TO F.B.I. AGENT McCARTIN WAS VOLUNTARY. . . . .	27
III   WHETHER SHIRLEY BROWN'S TESTIMONY CONCERNING THE PLANNED BANK BURGLARY IN NEW JERSEY WAS PROPERLY ADMITTED. . . . .	32
IV    WHETHER ANTHONY CAMPANILE HAD STANDING TO COMPLAIN OF THE SEARCH OF MICHAEL CAMPANILE'S APARTMENT . . . . .	38

## STATEMENT OF FACTS

### The Government's Case

On the night of May 30 - 31, 1973 The Howard Bank in Enosburg Falls, Vermont, which was insured by the Federal Deposit Insurance Corporation, (GX 85)\* was broken into and coins with a total face value of approximately \$944.91 were taken. (GX 74; Tr. 23). The American Legion Post in Enosburg Falls also was burglarized on that evening and cash totaling approximately \$300, including \$75 in one-dollar bills was taken as well as a quantity of cigarettes, largely Pall Malls. (Tr. 194 - 206, 210 - 11, 270). The Franklin Bank in Milton, Vermont, also insured by the Federal Deposit Insurance Corporation, (GX 86; Tr. 301) was burglarized on that same night and approximately \$1454.25 in coins was taken. (GX 74; Tr. 23).

Each of the tellers at The Howard Bank in Enosburg Falls left her coins securely locked in her teller's safe before leaving on the night of May 30.

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\* GX refers to Government Exhibits. Other references are DA - Defendants' Appendix, Tr. - Transcript.



(Tr. 45 - 46, 150 - 51, 155 - 57, 161 - 63, 308 - 09).

Robert L. Geraw, the bank custodian, cleaned up in the bank and left with everything in order at approximately 7:30 P.M. on May 30. (Tr. 285).

Campanile and Monks first were identified as being in Enosburg Falls on the night of the burglaries at 11:25 P.M. on May 30 when they stopped at the residence of Helen and Carl Converse, who lived on Orchard Street, seven houses away from The Howard Bank which was burglarized. (Tr. 81 - 82). They spoke with Mrs. Converse who identified one of the men as William Monks. (Tr. 38 - 40). Monks indicated that he and his companion were having trouble with the linkage on their van, a blue Chevrolet with a snubbed nose. (Tr. 41, 45). Monks discussed the situation and while doing so noted that Enosburg Falls was a quiet town and there were no police around. (Tr. 41, 70). Wendell Cassidy, who lived across the street from the Converses, observed that the van was a Chevrolet with New Jersey plates on it, identified William Monks as one of the two men associated with the van, and attempted to assist them in repairing the transmission. (Tr. 131 - 32). Mr. Converse noted during the course of events that one of the individuals was very nervous. (Tr. 133).

Richard L. Perkins and William Lassen were carnival workers in Enosburg Falls who were approached by Campanile and Monks outside a restaurant in Enosburg Falls late on the night of May 30 and went down a nearby street to assist them in repairing the transmission on their van. (Tr. 139 - 41, 302 - 05). After working on the van, Lassen and Perkins went to the American Legion with Campanile and Monks and had some beer. (Tr. 305).

Andre Beaulieu, the bartender at the American Legion, observed Campanile and Monks come into the American Legion with the two carnival men and served them beer. (Tr. 189, 234). While the men were having beer Beaulieu heard Campanile and Monks discuss the lack of police protection in the area. (Tr. 193 - 94). He also noted that they did not seem to have much cash since they had difficulty coming up with enough money to pay for the last round of beer. (Tr. 194 - 95). Campanile and Monks, together with the two carnival workers, left the American Legion at approximately 12:45 A.M. on May 31, following which Beaulieu immediately locked up the American Legion and left. (Tr. 195). Beaulieu observed the snub nosed van with out-of-state commercial license plates being driven away as he came out of the American Legion. (Tr. 196 - 97).



Robert Geraw, the custodian at The Howard Bank, returned to the bank at 6:30 A.M. on May 31 and found the main rear door of the bank had been pried open, the tellers' coin safes broken into and the coins removed. (GX 27 - 31; Tr. 290 - 92). In addition, doors in the rear of the bank leading from the outside into air conditioning and equipment storage areas, but not into the bank itself, had been pried open. (GX 33, 34, 36, 68; Tr. 290, 345 - 46).

A break-in at the American Legion in Enosburg Falls was reported to Robert L. Graeter, the Legion First Vice Commander, late in the morning on May 31. (Tr. 270 - 71). A check with Mr. Beaulieu showed that over \$300 including approximately \$75 in one-dollar bills, and the complete supply of Pall Mall cigarettes, approximately five to six cartons, had been taken. (Tr. 206, 210 - 11). The safe had been pried open and a green tackle box containing some of the cash had been taken. (GX 13; Tr. 196, 204 - 06, 210, 346 - 47). In addition, the coin box in the pool table at the Legion had been pried open despite the fact that the coin box was not hooked up to run the pool table and had not been used since the Legion obtained the pool table five or six years earlier. (GX 11; Tr. 197 - 99).

The tellers at The Franklin Bank in Milton all left coins properly locked in their tellers' vaults on May 30. (Tr. 311 - 12, 315 - 20). George O. Coffrin, the custodian at The Franklin Bank cleaned up and left around 11:00 P.M. on May 30, at which time all the doors and windows were locked. (Tr. 307 - 08). Edward Charbonneau, a Milton Police Officer, patrolled in the area of the bank until he went off duty at 2:00 A.M., but saw no activity around the bank. (Tr. 323 - 25). William D. Ryan was employed as the driver of an industrial sweeping truck at a nearby shopping center and operated the truck from approximately 11:00 P.M. on May 30 until 1:00 or 1:30 A.M. on May 31. He saw nothing unusual around the bank. (Tr. 332 - 34). Henry I. Verge lived on the other side of the road from the bank and was up between 2:45 A.M. and 3:30 A.M. on May 31. He had a clear view of the back of the bank but noticed nothing out of the ordinary. (Tr. 330 - 31). Ronald Lambert lived across from the bank and while up at approximately 4:00 A.M. noticed vehicle parking lights in the field near the bank. (Tr. 334 - 35).

The tellers coming in the next morning found their coin vaults had been pried open and the coins were



gone. (GX 43 - 46; Tr. 311 - 12, 315 - 20). Entry had been gained by prying open a window in the rear of the bank. (GX 54; Tr. 349).

Sergeant George O. Patch of the Vermont State Police, an expert in crime scene work, (Tr. 341 - 42) concluded that the entries into The Howard Bank in Enosburg Falls, the American Legion in Enosburg Falls and the Franklin Bank in Milton were all performed in a similar manner, through the use of prying to obtain entry. (Tr. 343 - 44, 347, 385 - 86, 402). In addition, blue-green pry marks found at The Howard Bank in Enosburg Falls and the American Legion in Enosburg Falls appeared to be of similar origin. (Tr. 350 - 52).

Essex Junction, Vermont police officers Zane L. Snelling and Rodney Mills observed the blue Chevrolet van with New Jersey license plates XFL - 98N moving slowly through the town at around 4:30 A.M. on May 31. (GX.40, 57 & 58; Tr. 448 - 50, 468). They followed the van for a period of time, during which the rear door opened. (Tr. 451). Campanile came back to close the door, had a surprised look on his face when he looked back and saw the police car, gave a fixed smile and a wave of the hand

and closed the door. (Tr. 451 - 52, 454, 471 - 72).

Snelling and Mills were about to stop the van when they received a call about another stolen vehicle in the area, and proceeded to answer that call. (Tr. 453).

Barry Waldrige was working at his Exxon Station in St. Johnsbury, Vermont on May 31, 1973 at around 9:30 A.M. when Campanile and Monks came into the station in the Chevrolet van and indicated they were having transmission trouble. (Tr. 480 - 85). Waldrige looked at the van and told them that he would be able to fix the van but it would take some time and he would need to call in an assistant to take care of the station. Campanile and Monks agreed to this and before leaving Campanile gave Waldrige \$20 in one dollar bills as a deposit on parts for the van.\*

Pat McCulloch, Waldrige's part-time assistant, came by the station while Monks and Campanile were there

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\*  
The van had been stolen on May 29, 1973 in Paterson, New Jersey from Peter Sesto who had cleaning equipment in it at the time. (GX 38, 109 - 113; Tr. 980 - 82). The license plates on the van (GX 57 - 58) were stolen from a 1972 green Ford van owned by Edward J. Gossett of East Paterson, New Jersey between May 26 - 29, 1973. (Tr. 224 - 26).



and was subsequently joined by Fred Priest in his 1969 Dodge Charger. (Tr. 486 - 88). Campanile and Monks inquired of McCullock and Priest whether they would be willing to take them to New York while the van was left for repair. (Tr. 518 - 19, 686 - 88). Priest and McCullock agreed and Priest was paid \$100 for the trip down, including forty dollars in one dollar bills. (Tr. 578 - 79, 693). Campanile and Monks loaded the Priest automobile, insisting upon doing it themselves. (Tr. 571 - 72). Priest's car had heavy duty shock absorbers with additional support through air inflatable devices, but the car rode significantly lower nevertheless after McCullock and Campanile loaded it. (Tr. 573 - 76).

Just prior to leaving the four people stopped and McCullock went in to get cigarettes but had trouble obtaining them. Campanile told him not to worry since he had plenty of cigarettes. (Tr. 692). On the way down

to New York Campanile and Monks, who were using the names Joe and Bob,\* were particularly interested in listening to the radio, especially the news. (Tr. 577 - 80, 612 - 13, 672, 693, 695). They also cautioned Priest about driving too fast, appeared to be concerned about getting stopped by the police, and noted how long it took them to get out of Vermont. (Tr. 580 - 81, 695). Campanile and Monks also questioned Priest and McCulloch about whether it was necessary to have a pistol permit in Vermont. (Tr. 583, 694 - 95).

Campanile directed Priest into New York City and ultimately to an apartment in Paterson, New Jersey. (Tr. 584 - 89). Campanile and Monks insisted upon unloading the items from the car themselves, indicating that Campanile's brother lived there and he did not like to have people around. (Tr. 589 - 90, 697 - 98). Both McCulloch and Priest noted that one particularly heavy box was unloaded from the automobile, as well as a green tackle

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\*  
There was however one occasion when Monks used the name Tony in reference to Campanile and received a quick glance immediately in response. (Tr. 589 - 90).



box. (Tr. 589 - 90, 596, 698). Priest observed the unloading of a gray briefcase which he subsequently identified as identical to Government Exhibit 84. (GX 84; Tr. 591 - 92, 646 - 47, 666). After the unloading Monks left with McCulloch and Priest, directed them out of the neighborhood, and had them drop him off. However, when he got out of the car Monks walked for a distance in the same direction that Priest and McCulloch were driving. (Tr. 597, 699).

Priest and McCulloch subsequently returned to New York and New Jersey on June 4, 1973 with Special Agent Fred P. List of the F.B.I. and Timothy Maxfield of the Vermont State Police. They pointed out the apartment Campanile and Monks had taken them to. (Tr. 599, 702 - 03, 725 - 26, 746). F.B.I. agents obtained a search warrant for the premises, at 444 E. 36th Street in Paterson, New Jersey, and executed it on June 5, 1973. (Tr. 766 - 67). Three cartons of cigarettes, two Pall Mall and one Chesterfield, with Vermont tax stamps were found in a cardboard box in the kitchen. (Tr. 887 - 89; GX 90, 91 & 92). Coin wrappers of various denominations were found in a bag in a trash can in a common area in the apartment house, but the bag also included envelopes with

the address of 444 E. 36th Street and the name Michael Campanile. (Tr. 889 - 91). Coins of a total value of \$188.41 were found in glass jars in the bedroom of the apartment. (Tr. 891). Cleaning equipment, subsequently identified as having been in the van when it was stolen, was found in a common hallway outside the apartment. (GX 109 - 113; Tr. 893, 986). A black Samsonite suitcase containing a Luger pistol, ammunition and cleaning equipment, and an ammunition box with Campanile's fingerprint on it also was seized. (GX 82; Tr. 894, 966).

William Monks was arrested by Special Agents of the F.B.I. on June 28, 1973 as he was getting into his car. He had a cigar box in his possession at the time of the arrest which contained rolled coin of a value of \$215.50. (Tr. 899 - 900). Monks made a statement to the F.B.I. agents in which he indicated that he had gone to Vermont with Campanile a month earlier to fish, they had gone in a van which had shifting trouble with the transmission and had paid two boys to bring them back. (Tr. 900 - 03). A search warrant was obtained for Monks' residence, 73 E. 33rd Street, Paterson, New Jersey and unused coin wrappers of various denominations were recovered from a green tackle box. (Tr. 905).



F.B.I. Agents Robert Craig and Roger Nisley conducted a consent search of Monks' automobile on June 28, 1973 and found rolled coin underneath the seat and a "slap hammer" in the trunk. (GX 105; Tr. 990 - 94, 1004 - 05). Nisley, who had worked for over a year in the auto theft division of the F.B.I. in New Jersey, testified that the slap hammer could be used either to pull out dents on cars or to pull locks from vehicles. (Tr. 1006 - 09).

Andrew B. King of Palisades Park, New Jersey knew Monks during the summer of 1973 and set up a coin deal with Monks and Pasquale Borelli. (Tr. 1017 - 21). Monks came to King's store in his car and went with King to a location where two boxes of wrapped coins totaling approximately \$2,000 were transferred from Monks' car to Borelli's. Borelli subsequently paid Monks and King for the coin. (Tr. 1020 - 27, 1051 - 57, 1060 - 73). King also conducted a similar coin deal with Monks in the amount of about \$5,000 in February or March, 1973. (Tr. 1027 - 28).

Shirley Brown made a trip with William Monks in August, 1972 to a rural area in western New Jersey. (Tr. 1071). Monks pointed out a bank to her and told her he intended to burglarize it. (Tr. 1071 - 72).

Campanile was arrested by the New York City Police on state charges on August 17, 1973 at approximately 1:00 A.M. (Tr. 844 - 45). He was taken into custody by the F.B.I. on federal charges at 9:08 P.M. on the 17th and transported to the Federal Detention Center on West Street in New York. (Tr. 846 - 47). Campanile told F.B.I. Agent Robert McCartin that he had stolen the van, came to Vermont to commit robberies and had a Luger with him on the trip. He declined to answer questions with respect to robberies in Vermont.\* (Tr. 857, 968 - 73).

#### The Defendants' Case

Defendant Campanile called F.B.I. Agent Fred P. List in an attempt to bring out information with respect to other robberies and burglaries of financial institutions in Vermont. (Tr. 111 - 15). Steven B. Ragan, bank manager of the Franklin - Lamoille Bank located in Milton, Vermont testified concerning the personnel situation

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Additional facts dealing with the interview by Agent McCartin are brought out in Point II, infra as they relate to the claim of defendant Campanile that the statement was inadmissible.



at that branch bank, as well as identifying some wrappers used at the bank. (Tr. 1114 - 19).

Ralph D. Ryan testified that he resided in Milton, Vermont and had in the past observed cars parked in the general area around the local high school late in the evening or early in the morning. The bank is approximately 1/4 mile from the high school. He knew nothing about any activities on May 30, 1973, however. (Tr. 1173 - 74). George A. Jimmo testified concerning the purchase of coin wrappers for the various branches of The Howard Bank. (Tr. 1121 - 26). Vincent H. Naramore, professor of mathematics at St. Michael's College, testified that based upon his examination of the list of coins (GX 74), that they would occupy approximately 1300 cubic inches. (Tr. 1134). He also concluded that the weight altogether was approximately 220 pounds. (Tr. 1135).

Maura Campanile, Anthony Campanile's sister-in-law, testified concerning the search by the F.B.I. of the apartment she occupied with her husband on June 5, 1973. She claimed the coins in the jars in the bedroom belonged to her and her husband. (Tr. 1149 - 50). Anna Campanile, the mother of Anthony Campanile, testified that the traffic around 444 E. 36th Street is congested and it can

be a difficult area to find. (Tr. 1174 - 77). She also testified to having observed coins at the apartment. (Tr. 1177 - 78).

Defendant Monks called Alan S. Frigon, a loan officer at the Montpelier National Bank, who testified to having put together coins totalling \$2,307.16 (the amount taken) into a single container and finding it very difficult to move. (Tr. 1182 - 85, 1195). He also testified concerning wrappers received on coins at the Montpelier National Bank. (Tr. 1187 - 89). Frigon agreed on cross-examination that it would have been easier to transport the money if he had divided it into four separate packages rather than trying to put it all into one suitcase. (Tr. 1196 - 97).

Defendant Monks also called Special Agent Richard Heon, who testified concerning the Campanile apartment. (Tr. 1198 - 1201).

#### The Government's Rebuttal Case

The Government in rebuttal called Special Agent Richard Heon who testified concerning the execution of the search warrant at the Campanile apartment. (Tr. 1202-08).



POINT I

THE EVIDENCE OF OTHER CRIMINALITY WAS PROPERLY ADMITTED TO SHOW KNOWLEDGE, INTENT, PLAN, SCHEME, IDENTITY AND RES GESTAE.

Defendants object to the admission of various items of evidence on the ground that the prejudicial nature of this proof far outweighed its probative value. This Circuit has adopted the expansive theory with respect to criminal acts. "The rule of this Circuit is the inclusory form which holds that evidence of other crimes is admissible except when offered solely to prove criminal character." United States v. Keilly, 445 F.2d 1285, 1288 (2d Cir. 1971), cert. denied, 406 U.S. 962 (1972). Evidence of other crimes is admissible to prove the crime in question, as res gestae, to show motive, intent and knowledge, to rebut an entrapment defense, to show identity, plan or design and the absence of mistake or accident. Spencer v. Texas, 385 U.S. 555, 560 - 61 & n.7 (1967). See Wigmore, Evidence §§ 300-373 (3d Ed. 1940). The evidence which the Government introduced in the trial met these criteria for probativeness and were not outweighed by possible prejudice.

All of the evidence was admissible to show knowledge and intent to commit the two bank burglaries

since this element was never conceded by the defendants. United States v. Drummond, Docket No. 74-2264 (2d Cir., Feb. 11, 1975); United States v. Johnson, 382 F.2d 280 (2d Cir. 1967); United States v. Deaton, 381 F.2d 114, 117 (2d Cir. 1967); United States v. Klein, 340 F.2d 547 (2d Cir. 1965), cert. denied, 382 U.S. 850 (1965). All the evidence also was relevant to prove a scheme or plan to commit the bank burglaries in Vermont. See, e.g., United States v. Overton, 470 F.2d 761, 766 (2d Cir. 1972), cert. denied, 411 U.S. 909 (1973); United States v. Persico, 425 F.2d 1375, 1384 (2d Cir.), cert. denied, 400 U.S. 869 (1970); United States v. Light, 394 F.2d 908, 912-13 (2d Cir. 1968).

The evidence brought out in the trial inferred that the Campanile and Monks scheme was as follows: that Campanile and Monks would steal a vehicle capable of transporting the burglary proceeds; that they would use stolen license plates on the vehicle and travel to Vermont into areas where police protection was not significant under the guise of being in Vermont on a fishing trip; that they would burglarize banks and other institutions, while at the same time maintaining sufficient protection for themselves to insure their



mission could be carried out; and that they would return to New Jersey with the proceeds and dispose of the same.

The Government was entitled to prove the burglary of the American Legion by Campanile and Monks and the removal of its proceeds, since this tended to identify the persons who had committed the burglaries at the two banks as well as showing the plan and scheme. An examination of GX 2, a Vermont highway map, shows a logical route from Enosburg Falls (Legion and The Howard Bank) through Milton (Franklin Bank) to Essex Junction (observed by police) and on to St. Johnsbury (where van was abandoned). The distance among the points which had to be travelled fits in well with the presence of Campanile and Monks at the Legion in Enosburg Falls at 12:45 A.M. They then had time to burglarize the American Legion and The Howard Bank before moving on to the Franklin Bank in Milton, arriving, or more likely departing, there around the time when the lights were seen in the field near the bank (4:00 A.M.) and after the time when the last overlapping witness could testify that the area was quiet, around 2:00 A.M. They had time to burglarize the Franklin Bank and were observed in Essex Junction at around

4:30 A.M., before showing up in St. Johnsbury around 9:30 A.M. The other evidence clearly illustrated that the same persons committed all three burglaries since the place of entry and methods of entry were similar, all were burglarized in one night, the items taken were generally similar, and small safes or vaults were broken into at all three locations. Further, the American Legion and The Howard Bank break-ins had similar paint on pry marks, and most probably were committed by strangers to the area.\*

All of the available evidence\*\* suggested that Campanile and Monks had committed the Legion burglary.

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\* At the American Legion a pool table which had not been used for coin operation for five - six years was broken into. The Howard Bank entry was made into air conditioning and storage areas, which anyone familiar with the bank would realize did not lead into the main part of the bank.

\*\* Time frame, presence at the Legion earlier, dollar bills, cigarettes, green tackle box, breaking into the pool table, and Campanile's stated purpose in coming to Vermont.



The time frame, remarks made earlier by Monks and Campanile, method of entry, color and types of marks left upon entry, and an ignorance of the area they were working in enabled the Government to identify Campanile and Monks as the burglars at the two banks based upon the burglary at the American Legion. The Government was entitled to prove the Legion burglary to show identity. United States v. Frascone, 299 F.2d 824, 829 (2d Cir.), cert. denied, 370 U.S. 910 (1962); United States v. Pugliese, 153 F.2d 497, 499 - 500 (2d Cir. 1945). See United States v. Sidman, 470 F.2d 1158, 1166 (9th Cir. 1972), cert. denied, 409 U.S. 1127 (1973).

Evidence of the circumstances surrounding the theft and recovery of the van and the cleaning equipment enabled the Government to tie the van, Michael Campanile's apartment and the evidence found there, to Monks and Anthony Campanile and their presence in Vermont and the burglaries of the banks. The defendants never conceded that they had been in Vermont and for this reason the Government was required to tie them to the van and show an illicit purpose in coming to Vermont. Further, the van was an integral part of the plan and scheme to burglarize banks since it protected their identity, gave them a covering story, the fishing trip, and enabled them

to carry away the proceeds from burglaries. The courts have held evidence of the use of stolen vehicles in crimes properly admissible where the use of the stolen vehicle facilitates the commission of the crime. United States v. Persico, 425 F.2d 1375, 1384 (2d Cir.), cert. denied, 400 U.S. 869 (1970); United States v. Leftwich, 461 F.2d 586, 589 (3rd Cir.), cert. denied, 409 U.S. 915 (1972).

The gun, ammunition and cleaning equipment in the briefcase (GX 84) were tied to Campanile and the van and as such the jury could reasonably find that the weapons were in the van and were there to insure the success of the venture. This is particularly appropriate since Campanile stated to F.B.I. Agent McCartin that he had gone to Vermont to commit robberies, which suggests the use of force. See United States v. Baker, 419 F.2d 83, 86 - 87 (2d Cir. 1969), cert. denied, 397 U.S. 971 (1970); United States v. Johnson, 382 F.2d 280 (2d Cir. 1967).

The evidence of the prior coin transaction between Monks and Andrew King was evidence of King's ability to identify Monks in the later transaction, following the burglary, and also was indicative in the context of his other actions, of Monks intent in coming to Vermont. Evidence of the prior coin transaction



clearly indicated a pre-disposition on Monks part to deal in coins before coming to Vermont and showed he knew of an outlet for them before he left. Proof of the prior coin transaction showed intent and illustrated the plan and scheme.

The testimony of Shirley Brown about Monks' prior statement to her concerning a bank burglary he proposed in New Jersey\* was similar in many ways to those ultimately performed in Vermont. It was to be a bank burglary, Monks noted that the town had a lone police car, it was in a rural area, it was to be with Campanile, and Monks sought to insure that he would not be identifiable.\*\*

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\*  
The Bruton aspects of this statement are discussed in Point III, infra.

\*\*  
Monks and Campanile attempted to disguise their identity in Vermont by the use of the stolen license plates and van, together with the fishing equipment and the use of the false names Joe and Bob when they finally needed assistance.

All of the evidence with respect to other criminality clearly was admissible for the reasons set forth above. Even to the extent that this Court might find that any of it was inadmissible, it certainly was harmless error beyond a reasonable doubt when viewed in the context of the strength of the Government's overall case. Defendant Monks contends in his brief that the eye witness and fingerprint information placing both defendants in Enosburg Falls, the identification of the vehicle and Campanile in Essex Junction, the witnesses who identified Monks and Campanile in St. Johnsbury, the coin evidence, including the wrapped coins seized from Monks at the time of his arrest and that found in his automobile, together with the wrappers taken from his apartment and found in the trash barrels behind the Campanile apartment, plus the evidence of the sale of coin to King and Borelli rendered the admission of the Shirley Brown evidence unnecessary. (Def. Monks' brief at 15 - 17). This concession of the strength of the Government's evidence applies equally to the other contested related crimes evidence and suggests that the admission of any or all of that evidence, if it could be construed as error, was harmless error at most in view of the strength of the Government's case.



POINT II

CAMPANILE'S STATEMENT TO F.B.I. AGENT McCARTIN  
WAS VOLUNTARY

Defendant Campanile contended during the trial that his statement to Agent McCartin was not voluntary and thus inadmissible. The trial court held a hearing on this question, at which time the evidence developed as follows.

Campanile was arrested around 1:00 A.M. on August 17, 1973 by the New York City Police on state charges. (Tr. 846 - 47, 858). Campanile was taken into federal custody for interstate transportation of a stolen motor vehicle at 9:08 P.M. that day and arrived at the Federal House of Detention at 9:31 P.M. (Tr. 847). Agent McCartin began the interview at 9:47 P.M., 39 minutes after Campanile was taken into federal custody. (Tr. 847). Agent McCartin asked Campanile if he was a drug addict immediately after the arrest and Campanile stated that he was addicted to heroin. Campanile told Agent McCartin he had used heroin for the last time one or two hours before he was arrested by the New York City Police, or approximately 24 hours earlier. (Tr. 846). Agent McCartin was aware of the symptoms of heroin withdrawal, had

observed people in this condition, knew Campanile was addicted to heroin, and had been for 20 years. (Tr. 848, 852 - 53). Agent McCartin did not recall observing any dialation of the pupils of Campanile's eyes during the interview, noted that Campanile was not nervous but rather was jovial, showed no other unusual symptoms, and did not exhibit any signs of a drug problem to Agent McCartin. (Tr. 853 - 54, 856). Campanile testified that he was undergoing durg withdrawal at the time he made the statement but remembered Agent McCartin reading the waiver form to him (Tr. 860 - 62) and admitted on cross-examination that he in fact had understood his rights. (Tr. 865). Campanile did not testify or claim that he did not understand his rights, did not intend to waive them and was not in sufficient command of his faculties to be able to make a proper statement.

Certain criteria are set out at 18 U.S.C. § 3501 for the Court to consider in determining whether there has been unnecessary delay and accordingly whether a statement is voluntary and are relied upon here by defendant Campanile. The criteria as set out in § 3501(b) and as applied here are as follows. First, the time elapsing between arrest and arraignment of the defendant making



a confession. Defendant made no objection in the trial court to a delay in arraignment, and in fact there is no evidence in the record of when Campanile was arraigned before the Magistrate. The absence of an objection below bars him from raising this claim for the first time on appeal. United States v. Indiviglio, 352 F.2d 276 (2d Cir. 1965)(en banc), cert. denied, 383 U.S. 907 (1966). Further, the failure to raise this question below has deprived the Government of the opportunity to make a meaningful record of the arraignment and surrounding circumstances. The second criteria is whether the defendant knew the nature of the offense with which he was charged or which he was suspected of at the time of making the confession. Agent McCartin told Campanile that he was being questioned about his knowledge of bank robberies in Vermont. (Tr. 849). The third and fourth criteria are whether the defendant was advised of his right to remain silent and advised of his right to counsel, neither of which is disputed here. The fifth criteria to be applied is whether the defendant was without the assistance of counsel when questioned, and there is no evidence in the record to indicate whether Campanile had an opportunity to consult with counsel prior to his

federal arrest. The record is reasonably clear that he had not consulted with counsel since his arrest on the federal charge, but Campanile does not claim that he requested counsel and was denied it. In addition, the record does not appear to show any objection to the admission of the statement on the ground of lack of counsel. It thus cannot be raised at this point.

United States v. Indiviglio, 352 F.2d 276 (2d Cir. 1965)(en banc), cert. denied, 383 U.S. 907 (1966); United States v. Sing Kee, 250 F.2d 236, 242 (2d Cir. 1957), cert. denied, 355 U.S. 954 (1958). The application of these criteria, which were not brought to the attention of the trial judge, illustrate that the statement clearly was voluntary, as found by the trial court. (Tr. 956 - 57).

The six-hour limitation contained in § 3501(c) is inapplicable since not objected to at the trial, thus depriving the Government of the opportunity to bring it-self within the exception set out in that section. In addition, the evidence clearly showed that Campanile made the statement within one hour of being brought into federal custody, which is within the limitation. To require that the state time in custody be tacked onto the federal time would render it impossible to obtain



statements from most defendants who had been in state custody, and certainly cannot be construed to have been the intent of Congress when it enacted § 3501(c).

Campanile's statement was voluntary, as found by the trial court, and was properly admitted.

POINT III

THE STATEMENT OF MONKS TO WITNESS SHIRLEY BROWN THAT MONKS AND CAMPANILE WERE PLANNING TO BURGLARIZE A NEW JERSEY BANK WAS RELEVANT TO PROVE CRIMINAL INTENT OF MONKS AND CAMPANILE, AND FURTHER AS TO CAMPANILE, THE STATEMENT WAS:

- (1) ADMISSIBLE UNDER THE CO-CONSPIRATORS EXCEPTION TO THE HEARSAY RULE, AND
- (2) HARMLESS ERROR, SINCE PRIOR TO OFFERING THE STATEMENT, FBI AGENT MCCARTIN TESTIFIED THAT CAMPANILE ADMITTED IN A POST ARREST STATEMENT THAT HIS PURPOSE IN "COMING TO VERMONT . . . WAS TO LINE UP ROBBERIES . . . ."

Witness Shirley Brown testified that in August, 1972, defendant Monks told her that Monks and Campanile intended to burglarize a bank in New Jersey. (Tr. 1071). At the time this testimony was offered, the Court admitted the testimony to show intent or knowledge, with a limiting instruction. (Tr. 1069). Defendant Campanile objected to the ruling on the ground of "hearsay" (Tr. 1069) but the Court adhered to its ruling and the evidence was admitted. At the close of the Government's case, defendant Campanile moved for a mistrial claiming that his Shirley Brown testimony was prejudicial (Tr. 1110), which motion was denied.

On the grounds of relevancy, as noted in Point I, the Shirley Brown testimony of Monks statement



was clearly relevant to show the intent or knowledge of Campanile, a necessary element of the crime charged, as well as relevant to show a common scheme, and identify and show an association of the defendants Monks and Campanile.

Defendant Campanile has raised the further question that the Monks statement should not have been admitted because such admission violated defendant Campanile's constitutional right of confrontation as guaranteed by the Sixth Amendment and Bruton v. United States, 391 U.S. 123 (1968). These arguments are unwarranted. There is no Bruton problem where: (1) the evidence is admissible under the co-conspirators exception to the hearsay rule, or (2) the statement amounted to harmless error.

A. THE STATEMENT OF MONKS WAS ADMISSIBLE  
UNDER THE CO-CONSPIRATORS EXCEPTION  
TO THE HEARSAY RULE.

The Government's evidence as outlined in the foregoing statement of facts clearly showed that Monks and Campanile were part of a conspiracy to burglarize banks. Briefly, the evidence showed that Monks and Campanile stole a van; that Campanile admitted the purpose of the trip to Vermont was to plan robberies; that

Monks and Campanile travelled together in the stolen van; that they were present at the burglarized Enosburg Falls American Legion club on the night it was burglarized; that on the same night the two banks were burglarized Monks and Campanile were observed in Essex Junction, close enough to the sites of the burglaries to have been able to commit them; that Monks and Campanile gave false identification the next day in Vermont; that a common means of burglarizing was employed at all three burglarized buildings; that they acted nervous, and that dollar bills and cigarettes, which circumstantial evidence linked to burglaries at the American Legion club and coins to the banks, were later found in the constructive possession of Monks and Campanile. All of this evidence amounting to proof aliunde of conspiracy had been admitted before the Monks statement to Shirley Brown was admitted.

Accordingly, the Monk's statement was admissible as a statement made by a conspirator in furtherance of the conspiracy. United States v. Annunziato, 293 F.2d 373, 378 (2d Cir), cert. denied, 368 U.S. 919 (1961). As pointed out in Annunziato, and in Second Circuit cases subsequent thereto, it is not



necessary that a conspiracy count be present to admit the co-conspirator's statement provided there is evidence to support a conspiracy or joint venture. United States v. Ruggiero, 472 F.2d 599, 607 (2d Cir.), cert. denied, 412 U.S. 939 (1973); United States v. Alsondo, 486 F.2d 1339, 1347 (2d Cir.), pet. for cert. granted sub nom. United States v. Feola, 42 U.S.L.W. 3504 (U.S. Apr. 15, 1974)(not on this issue).

Further, the defendant Campanile's argument that admission of the Monks statement violated Bruton v. United States, 391 U.S. 123 (1968), is not supported. As held by the Second Circuit Court of Appeals in United States v. Littman, 421 F.2d 981 (2d Cir. 1970), cert. denied, 400 U.S. 991 (1971), Bruton is inapplicable where the out of court statement is made by a co-conspirator in the course of the conspiracy and was admitted as a declaration made in furtherance of the conspiracy. Id. at 983.

Accordingly, the Monks statement that Campanile was involved in the planning of a New Jersey burglary was properly admitted under the "co-conspirator exception to the hearsay rule."

B. THE ADMISSION OF THE MONKS STATEMENT WAS NOT PREJUDICIAL BUT WAS HARMLESS ERROR SINCE CAMPANILE'S ADMISSION OF CRIMINAL INTENT (THAT HIS PURPOSE IN "COMING TO VERMONT . . . WAS TO LINE UP ROBBERIES . . .") WAS ALREADY IN EVIDENCE.

Even if the Monks statement could be considered as falling outside of the co-conspirators exception to the hearsay rule, which the Government urges is not the situation, the admission should be considered at most as harmless error, under the reasoning of Chapman v. California, 386 U.S. 18 (1967); Harrington v. California, 395 U.S. 250 (1969) and subsequent Circuit Court cases following the same. Harrington specifically held that Bruton was not violated where the admission of a hearsay statement of a co-defendant merely added to otherwise overwhelming evidence against the defendant, and thus the admission constituted harmless error beyond a reasonable doubt. Id. at 254.

Applying this Supreme Court test to the present case, FBI Agent McCartin had already placed in evidence Campanile's admission that Campanile came to Vermont to plan robberies. (Tr. 969-70). Further, all of the other Government evidence, including Campanile's



damaging admission, had been received prior to the Monks statement. Against this background, the mere statement by witness Shirley Brown that Monks earlier planned to burglarize a New Jersey bank was practically surplusage. The admission of Campanile had already provided overwhelming evidence of his criminal intent. The Second Circuit has previously held that a Bruton violation may be disregarded as harmless error where other evidence is overwhelming. See Stone v. United States, 435 F.2d 1402, 1406 (2d Cir. 1970), cert. denied, 402 U.S. 977 (1971); United States v. Canjiano, 491 F.2d 906, 911 (2d Cir. 1974), cert. denied, 43 U.S.L.W. 3229 (U.S. Oct. 21, 1974). More recently, the United States Supreme Court has reaffirmed the harmless error rule regarding alleged Bruton violations. See Brown v. United States, 411 U.S. 223, 93 S. Ct. 1565, 1570 (1973).

Accordingly, on the ground that the Monks statement was admissible under the co-conspirator exception to the hearsay rule, and on the further ground that its admission constituted at most harmless error, defendant Campanile's contentions regarding this statement should be rejected.

POINT IV

ANTHONY CAMPANILE DID NOT HAVE STANDING  
TO COMPLAIN OF THE SEARCH OF MICHAEL  
CAMPANILE'S APARTMENT

Defendant Campanile complains of the trial court's ruling which denied him standing to complain of the search of his brother's apartment.\*

Campanile contends that he was aggrieved within the meaning of Rule 41(e) and as such had standing to complain of the search. Rule 41(e) specifically provides that the individual claiming possession of the property must show "that he is entitled to lawful possession of the property which was illegally seized." The Supreme Court stated in Jones v. United States:

In order to qualify as a "person aggrieved by an unlawful search and seizure" one must have been a victim of the search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else.

362 U.S. 257, 261 (1960). Anthony Campanile testified

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\* Defendant Monks conceded he had no evidence on the issue of his possessory interest in the apartment and its contents. (Tr. 823).



at a hearing on this issue before the trial court and at no time made any claim that he was entitled to possession of the items seized, although this question was specifically brought out by the Court. (Tr. 814). Campanile's testimony with respect to his possession of the apartment consisted only of a statement that he had originally leased the apartment through his wife and that his brother had been in possession of it since 1971 pursuant to a sub-lease. (Tr. 815, 818). Campanile did not claim he had lived at that location since 1971 other than occasional visits. (Tr. 820). In addition, Campanile admitted using a location in Elmwood Park, New Jersey, where he had lived since 1972, as his residence. (Tr. 820). Since Campanile did not have any possessory interest in the premises he lacks standing to complain of the search. Abel v. United States, 362 U.S. 217 (1960); United States v. Cowan, 396 F.2d 83 (2d Cir. 1968). Campanile was not charged with a possessory crime and thus cannot claim standing on this basis. See Simmons v. United States, 390 U.S. 377, 390 (1968); Brown v. United States, 411 U.S. 223, 228 (1973).

The burden is on defendant Campanile to show the requisite standing, and having failed on this issue

he cannot complain of the search. United States v. Sacco, 436 F.2d 780, 784 (2d Cir. 1971). The denial of the standing to Campanile was proper and accordingly the motion to suppress was properly denied.

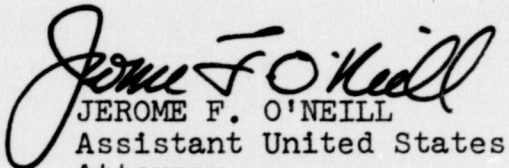


CONCLUSION

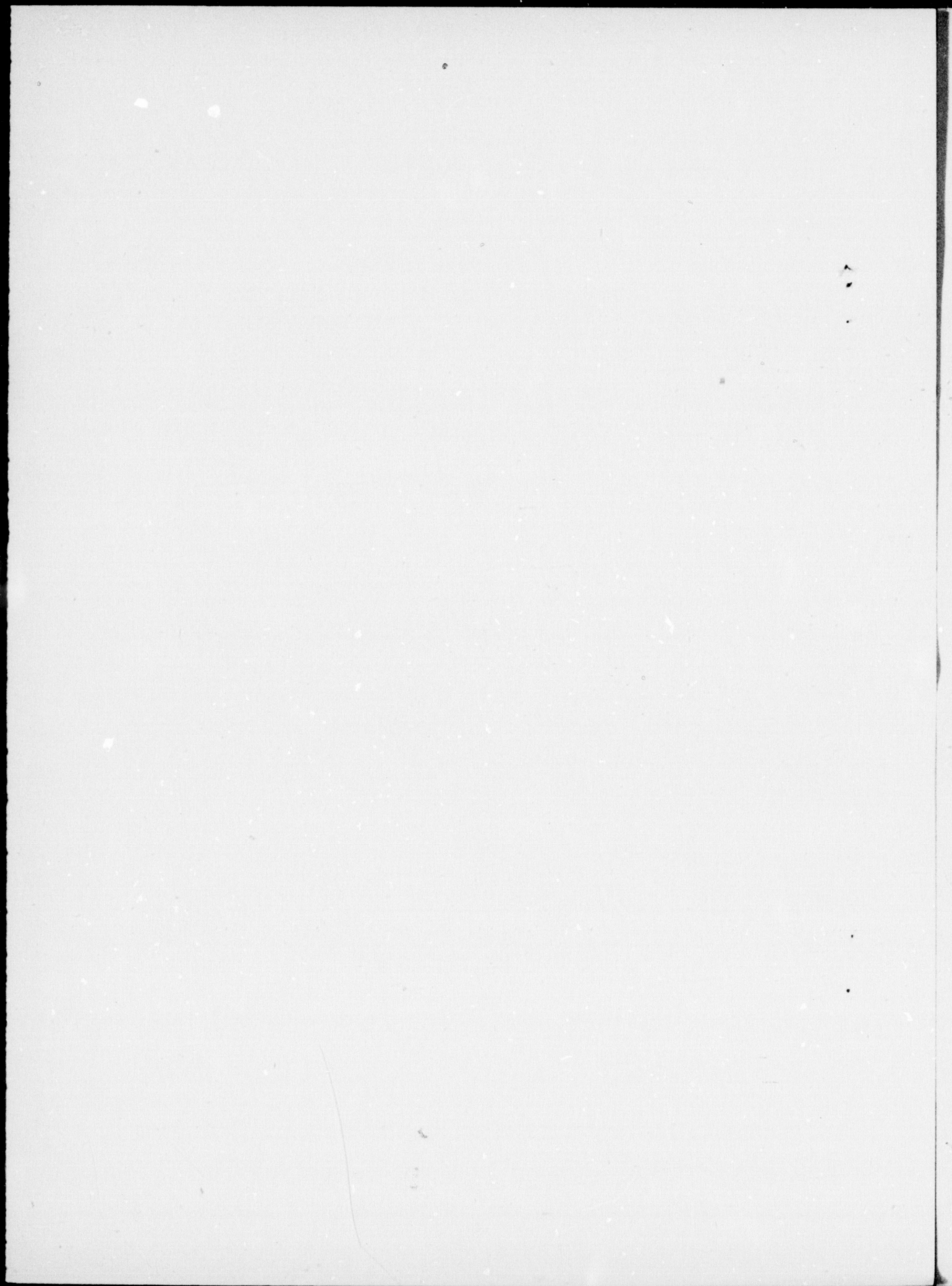
The convictions of Campanile and Monks should  
be affirmed.

Respectfully submitted,

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Of Counsel

February 26, 1975





IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

ANTHONY THOMAS CAMPANILE  
WILLIAM MONKS,

Appellants

Docket Nos. 74-2160  
74-2320

CERTIFICATE OF SERVICE

I do hereby certify that on the 26th day of February, 1975, I made service of the BRIEF FOR THE UNITED STATES upon Anthony Thomas Campanile and William Monks, by mailing two copies of same to their attorneys of record, J. William O'Brien, Esq., 147 Main Street, Burlington, Vt. 05401 and Richard C. Blum, Esq., 112 Church Street, Burlington, Vt. 05401.

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